

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Arthur E. Wallace, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
patrick.o'donnell@jud.ca.gov

DATE: October 2, 2003

SUBJECT: *Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale* (revise form MC-095) (Action Required)

Issue Statement

Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale (form MC-095) was adopted in 2001 to implement Civil Code section 2924j(h). The accounting method on the form is somewhat confusing. As a result, the foreclosure costs recoverable under Civil Code Section 2924k(a)(1) may be incorrectly recovered twice under item 16.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend form MC-095 to eliminate the possibility of an erroneous double deduction of recoverable expenses.

Revised form MC-095 is attached at pages 3–5.

Rationale for Recommendation

The method of accounting in form MC-095, item 16, is problematic. Because the trustee handles the foreclosure and incurs costs and expenses in connection with it, the sale-related fees, costs, and expenses authorized by Civil Code section 2924k may be deducted twice under the current form—on both line 16b (foreclosure fees and costs) and line 16f (trustee's fees and expenses). To eliminate this problem, line 16b should be deleted altogether. This will require the foreclosure costs and

fees to be itemized along with the trustee's fees and costs in item 15 (trustee's other fees and costs), the total of which is entered on line 16f. This should eliminate the possibility of a double deduction of recoverable expenses.

Alternative Actions Considered

The form might have been left unchanged because knowledgeable practitioners are able to use it correctly. However, it is better to eliminate any potential problems and errors by correcting the form.

Comments From Interest Parties

Three public comments were received on this forms proposal.¹ All three commentators agreed with the modification.

Implementation Requirements and Costs

Some small expenses will result from the replacement of the existing form with the revised version. The benefits of having a correct, mandatory form available to the courts and practitioners for the purpose of depositing surplus proceeds of a trustee's sale outweigh the minimal costs of changing the form.

Attachments

¹ A chart summarizing the comments is attached at page 6.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, state bar number, and address</i>): TELEPHONE NO.: FAX NO. (<i>Optional</i>): E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
IN RE (<i>ADDRESS OF REAL PROPERTY</i>):		
PETITION AND DECLARATION REGARDING UNRESOLVED CLAIMS AND DEPOSIT OF UNDISTRIBUTED SURPLUS PROCEEDS OF TRUSTEE'S SALE		
Jurisdiction (<i>check all that apply</i>): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount deposited <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)		
CASE NUMBER:		

1. Petitioner (*name*): _____ is the trustee under the Deed of Trust described in items 2 and 3 below.

The Deed of Trust

2. The Deed of Trust encumbered the real property commonly known as *(describe)*:

(the "property") and legally described ☐ in Attachment 2 ☐ as follows:

3. The Deed of Trust was

a. Executed by (name): _____ as trustor.

b. Executed on (date):

c. Recorded:

(1) Date:

(2) County:

(3) Instrument number:

IN RE: 	CASE NUMBER:
----------------	----------------------

The Trustee's Sale, Surplus Proceeds, and Notice to Potential Claimants

4. The property was the subject of a trustee's sale that was held on *(date)*:
5. A trustee's sale guarantee was prepared for the trustee's sale. *(A copy of the trustee's sale guarantee must be attached as Attachment 5.)*
6. The total sale price of the property was: \$
7. After payment of the amounts required by Civil Code section 2924k(a)(1)–(2), there were surplus proceeds from the trustee's sale available to potential claimants in the total amount of: \$
8. Within 30 days after the trustee's sale, the trustee sent written notice under Civil Code section 2924j(a) to all persons with a recorded interest in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice. The names and addresses of all persons sent notice under Civil Code section 2924j(a) are as follows:

☐ Continued on Attachment 8.

The Claims

9. The trustee has received a total of *(specify number)*: written claims from potential claimants.
10. The trustee has exercised due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from the persons identified in item 8 to whom notice was sent.
11. The trustee submits this declaration under Civil Code section 2924j(c) for the following reason:
 - a. ☐ After due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds. *(If this reason applies, describe the problem of determining priorities in Attachment 11a.)*
 - b. ☐ The trustee has determined that there is a conflict between potential claimants to the surplus proceeds. *(If this reason applies, identify the claimants and describe the conflict in Attachment 11b.)*
12. The trustee provides the following additional information relevant to the identity, location, priority of potential claimants, and the conflict of claims:

☐ Continued on Attachment 12.

Notice of Intent to Deposit Funds and Proof of Service

13. The trustee has provided written notice to all persons with a recorded interest in the property who would be entitled to notice under Civil Code section 2924b(b)–(c). The notice includes the following information:
 - a. The trustee intends to deposit funds from the trustee's sale with the clerk of the court.
 - b. A claim for funds must be filed with the court within 30 days from the date of notice.
 - c. The address of the court in which the funds are to be deposited and a telephone number for obtaining further information.

(Proof of Service of the notice on all persons entitled to notice under Civil Code section 2924j(d) must be attached to this declaration as Attachment 13.)

IN RE:	CASE NUMBER:
--------	--------------

Deposit

14. Distributions

The trustee has distributed the total amount of: \$ _____ to the following claimants based on their written claims:
Name of claimant: _____ Amount: _____

☐ Continued on Attachment 14.

15. Trustee's Fees and Expenses

The trustee has incurred reasonable fees and expenses totaling: \$ _____. These fees and expenses are recoverable under Civil Code section 2924k(a)(1) and (b) and are described ☐ in Attachment 15 ☐ as follows (*specify*):

16. Deposit

The amount to be deposited is calculated as follows:

a. Trustee's sale proceeds	\$
b. Debt to foreclosing creditor	\$
c. Available surplus proceeds (<i>a minus b</i>)	\$
d. Claims paid by trustee (<i>from item 14</i>)	\$
e. Trustee's fees and expenses (<i>from item 15</i>)	\$
f. Remaining surplus proceeds (<i>c minus (d plus e)</i>)	\$
g. Filing fee	\$
h. Deposit (<i>f minus g</i>)	\$

(If the trustee is represented by an attorney, the attorney's signature follows):

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF ATTORNEY)		(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF TRUSTEE)		(SIGNATURE OF TRUSTEE)

SPR03-18

**Civil Case Management: New Form to Request an Extension of Time to Serve A Pleading
(approve form CM-020)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Grant Barrett General Counsel Superior Court of California, County of Calaveras	A	N	A statewide uniform form is appreciated and may highlight the relatively unknown requirements of rule 201.7.	No response required.
2.	Hon. Ronald L. Bauer Orange Co. Rules and Forms Committee Superior Court of California, County of Orange	AM	Y	<p>The Rules and Forms Committee of the Orange County Superior Court reviewed this item at their meeting of June 12, 2003, and agree with the following comments submitted by Judge Kim G. Dunning, member of the Rules and Forms Committee.</p> <p>1. The item concerning previous applications should have its own number (5.), and following items should be renumbered accordingly.</p> <p>2. The document title should be "Ex Parte Application and Order Extending Time to Serve Pleading" on the bottom of the page (front and back).</p>	<p>The committee agreed with this suggestion.</p> <p>The committee agreed that the title should be changed. It has been redesigned as "Ex Parte Application for Extension of Time To Serve Pleading and Orders."</p>
3.	Committee on the Administration of Justice (CAJ) The State Bar of California San Francisco, California	A	Y	The Committee on the Administration of Justice supports this proposal.	No response required.
4.	Mr. Robert Gerard President Orange County Bar Association	A	Y	Agrees with proposed changes, without specific comments.	No response required.
5.	Richard L. Haeussler Haeussler & Associates	A	N	Agree with proposed changes.	No response required.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR03-18

**Civil Case Management: New Form to Request an Extension of Time to Serve A Pleading
(approve form CM-020)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Hon. Suzanne N. Kingsbury Presiding Judge Superior Court of California, County of El Dorado	A	N	Agree with proposed changes.	No response required.
7.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	Under item 1, add a box with wording "In the Matter of" for Probate. The footer at the bottom of the form says "Service" Pleading but the top of the form says, "Serve" Pleading. Item 8—Instead of asking for a (date), the party should state the amount of time they are requesting.	Probate is covered under "petitioner" and "other." This mistake has been corrected.
8.	Ms. Sandra Mason Director of Civil Operations	A	N	Agree with proposed changes.	No response required.
9.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama	AM	N	Perhaps a check-the-box could be used so that it indicates when rule 379 notice has not been given and why.	The item has been modified to allow for an explanation why notice has not been given.
10.	Julie Setzer Superior Court of California, County of Sacramento	N	N	The form is too labor intensive for a judicial officer. Sacramento Superior Court requires that parties file a certificate of service acknowledging that all parties were served timely by the 75th day. Parties may seek an extension of time to serve, and courts may make the following orders: Certificate of Service shall be filed no later than: _____ The matter is set for hearing on: ____ at: Apply for order of publication immediately.	The committee disagreed that the form is too labor intensive for judicial officers. It agreed to add a provision regarding continuance of case management conferences, which should reduce the labor involved. The committee agreed generally that a standard provision should be added regarding an order continuing a case management conference, but adopted a

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR03-18

**Civil Case Management: New Form to Request an Extension of Time to Serve A Pleading
(approve form CM-020)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>Case Management Conference continued to ____ at _____. Case Management Conference set on ____ at _____. A Case Management Statement is due 15 days before the Case Management Conference. A Supplemental Case Management shall be filed on or before ____ (limited civil only).</p> <p>The Judicial Council form would require the judicial officer to mark the Other Orders box and write all of the information above each time a request is received.</p>	<p>different and simpler version than is proposed by the commentator.</p> <p>The committee agreed to add a standard provision ordering the continuance of the case management conference. This should alleviate the necessity for judicial officers to complete the "other orders" provision to include an order continuing the conference.</p>
11.	Ms. Judi Waterman Managing Attorney Superior Court of California, County of Fresno	A	N	<p>It has been suggested by court staff that a line be added in the order section for continuing the case management conference. Extending the time for service often results in the initial case management conference coming before the answer is due, thus requiring a continuance of the case management conference. Fresno's local form contains a continuance line and notes the new date, time, and place of the case management conference. It also requires the plaintiff to notify all other parties. While this verbiage could be written on the proposed form in the "Other orders" area, it would be time-consuming. Adding a line to note a continuance could be a benefit to the user of the form, especially in a heavy caseload situation.</p>	<p>The committee agreed to add an additional line about continuances.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.